THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 2905 of 2005

Dated: 03.10.2005

Between:

G.Madhusudhana Naidu, S/o.Seshadri Naidu,
R/o.Kakarlavaripalle, Kanipakam Post, Irala Mandal,
Chittoor District and others.

.....PETITIONERS

AND

Swayambhu Sri Varasiddhi Vinayaka Swamy Vari Temple,
Kanipakam, Irala Mandal, Chittoor District represented by its
Executive officer.

.....RESPONDENT

ORDER:

This writ petition is filed seeking a declaration that the auction notice dated 18.01.2005 issued by the respondent-Temple is arbitrary and illegal.

The petitioners, five in number, claim to be the lessees of the shop rooms bearing Nos.3,4,7,14,18 and 24, respectively, belonging to the respondent-Temple. It is stated that the said shops form part of 40 shops constructed by the respondent and the same were leased out by way of tender-cum-auction on 25.02.2004 . The lease

was for a period of three years commencing from 01.04.2004. The petitioners herein were declared as the successful bidders for the above said five shops and accordingly they were granted the lease. It is stated that though as per the agreement the lease has to be commenced from 01.04.2004, since the authorities of the respondent-Temple could not complete the constructions within time, the shops were handed over to them only in the month of November, 2004. In the circumstances, the petitioners along with other lessees submitted a detailed representation requesting the respondent-temple to implement certain assurances given by them, such as removal of shops on the southern side of the temple, shifting of car parking to parking area, shifting of the place of vehicle pooja, cancellation of shop selling vehicle pooja articles, shifting of bus stand towards shopping complex and also to stop the sale of articles by hawkers. It is stated that though the authorities assured the petitioners that their requests will be considered, while the representation was still pending, the respondent issued a public auction notification dated 18.01.2005 proposing to hold auction on 18.02.2005 in respect of certain other shop rooms. It is alleged that the existing lessees of the shops were already facing loss in the business and if fresh leases are granted under the auction notification dated 18.01.2005, the petitioners and other existing lessees would stand to suffer irreparable injury. Hence, this writ petition seeking a declaration that the auction notice dated 18.01.2005 is arbitrary and illegal.

On behalf of the respondent-temple, the Executive Officer of the Temple filed a counter-affidavit stating that the allegation of the writ petitioners that the proposed shops would adversely affect their business is incorrect and without any basis. It is also stated that the petitioners, being lessees, have no vested right to challenge the impugned notification since there is no illegality. It is also stated that the plea of the petitioners that the proposed shops are nearer to the shops held by the petitioners as lessees is incorrect. It is further explained that though the public auction was conducted on 28.02.2005, the same could not be finalized in view of the interim orders granted by this Court.

I have heard the learned counsel for the petitioners as well as the learned Standing Counsel appearing for the respondent.

As can be seen from the material on record, it is not in dispute that the shops granted to the petitioners on lease are totally different from the shops now proposed

to be let out under the impugned auction notice. However, the only grievance of the petitioners appears to be that since they made a representation to the respondent as to their grievance that the shops were handed over to them only in the month of November, 2004 and that they are also facing certain other difficulties because of the non-shifting of the car parking and not restricting the sale of articles by hawkers, the respondent, while keeping the said representation pending, has issued the impugned notification proposing fresh auction which would adversely affect the business of the existing lessees.

The plea of the petitioners that their business would be adversely affected cannot be enquired into by this Court since it is a pure disputed question of fact. It is for the respondent to consider the said allegation and to take necessary action. As a matter of fact the petitioners have already made a representation ventilating their grievances and the same is pending with the respondent.

However, since admittedly the shops now proposed to be auctioned under the impugned notification have nothing to do with the shops which were leased out to the petitioners, I am unable to hold that the respondent committed any error in issuing the impugned auction notification. May be that the representation of the petitioners is pending with the respondent, but merely on that ground they cannot seek Mandamus restraining the respondents from proceeding with the auction.

Therefore, I am not inclined to interfere with the impugned auction notice. However, it is made clear that the respondent shall consider the representation of the petitioners dated 29.09.2004 particularly with regard to their grievance that the shops were handed over to them only in November 2004 and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

It is needless to mention that the interim order granted pending this Writ Petition shall stand vacated.

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(G. ROHINI, J)

03.10.2005

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